

DAAD

Deutscher Akademischer Austausch Dienst
German Academic Exchange Service

**Information
on the Legal Requirements Applicable to the
Pursuit of Gainful Employment
by Foreign Students, University Graduates
Scientists and Other Academics**

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1 Introduction

The options open to foreign students, university graduates, visiting scientists and other academics from non-EU states for taking up gainful employment are governed, above all, by the Residence Act and the Employment Regulation. For EU nationals, the Freedom of Movement Act/EU is of relevance. However, other laws and regulations may also apply to the subject matter described in the following.

This information sheet makes no claim to completeness and reflects the status as of August 2012.

2 Possible forms of gainful employment

In principle, foreigners wishing to take up gainful employment in Germany require a residence title that entitles them to pursue gainful employment.

One exception to this rule applies to citizens of the member states of the European Union (EU), the European Economic Area (EEA) and Switzerland:

By Community law, they enjoy freedom of movement as employees and have the same access rights to the labour market as Germans. They do not require the approval of the Federal Employment Agency to take up gainful employment. Since 1st May 2011, this has also applied to the countries that joined the EU in 2004, namely Estonia, Latvia, Lithuania, Poland, Slovakia, Slovenia, the Czech Republic and Hungary. (For Malta and Cyprus, which also joined the EU in 2004, the Freedom of Movement for Workers has applied since the beginning.)

Citizens of Romania and Bulgaria, which joined the EU in 2007, still currently enjoy limited freedom of movement for workers. On principle, they may only pursue employment with the approval of the Federal Employment Agency (Section 284 Para. 1 Book Three of the Social Code). A job vacancy may only be filled by a citizen of one of these countries after a priority check has been carried out: Only if no German applicant or an EU citizen or EEA national with the same rights as Germans is available for the position may the job be filled by a citizen of one of the accession countries. In this respect, they have priority over workers from third countries. The said regulations shall be applicable within a provisional period which ends on 31st December 2013.

However, since the members of these "new" accession countries already have the same status as other EU citizens under residence legislation, they require no residence permit. This means that a residence permit for the purpose of gainful employment does not now allow them to work. Rather, they require a work permit (Section 284 Para. 2 and 3 Book Three of the Social Code). With the exception of these cases, a work permit no longer exists as a separate administrative act.

However, one exception applies to (Romanian and Bulgarian) graduates of German universities (Section 16 Para. 4 Residence Act) and to academics who are eligible for the "Blue Card" (Section 19a Residence Act): the latter may take on work in Germany that is appropriate to their qualifications without a priority check or the approval of the Federal Employment Agency being necessary (Sections 3a and 3b Employment Regulation). These regulations essentially apply to non-EU citizens; however, the Residence Act and the relevant regulations shall apply *mutatis mutandis* insofar as they contain more favourable regulations for citizens of EU accession countries (Section 284 Para. 6 Book Three of the Social Code).

For foreigners who are not citizens of the EU, nationals of countries belonging to the EEA, or citizens of Switzerland, but are members of a third country, the following rules apply: Foreigners from a third country wishing to take up gainful employment in Germany require a residence title that entitles them to pursue gainful employment. This residence title is issued by the foreigners authorities, however, the Federal Employment Agency must on principle approve the employment. This occurs internally within the authorities ("one-stop-government"), which means that the foreigners authority is the only office to which the applicant needs to go.

In the meantime, however, there are numerous exceptions to the requirement of the approval of the Federal Employment Agency, especially for foreign academics, so that an approval or even a priority check is often no longer required. The background to these new regulations, which recently came into effect as a result of the Act Implementing the EU Directive on

Highly Qualified Workers, is the endeavour to attract more qualified workers from abroad for the German market in order to counteract the skilled worker shortage in Germany. Read below for more details.

Ever since the Immigration Act came into force in 2005, the provisions of residence and employment laws have been very closely linked. Hence, we recommend that, if in doubt, the information on residence permit provisions are also consulted (*cf. DAAD – Information on the Statutory Conditions for Entry and Residence by Foreign Students and Academics*).

In general (Section 18 Para. 1 Residence Act), the admission of workers from third countries into the German labour market is subject to

- the requirements of the Germany economy,
- consideration of the situation in the labour market, and
- the need to combat unemployment.

A concrete job offer must be presented when applying for residence permit. The residence permit may only be issued according to Section 18 Para. 2 Residence Act if

- the Federal Employment Agency approves the job **or**
- a statutory instrument (e.g. Employment Regulation and Employment Procedural Regulation) or an intergovernmental agreement stipulates that the job may be pursued without the approval of the Federal Employment Agency.

Apart from listing jobs which are not subject to approval, these statutory instruments also determine in what cases and under what conditions the Federal Employment Agency may approve a job.

Pursuant to Sections 3a and 3b Employment Procedural Regulation, for example, the EU Blue Card and a residence permit for the purpose of pursuing a job that is appropriate to a qualification that is granted to specialists with a German university degree do not require approval.

In terms of approval-free jobs, a distinction is made, in particular, between jobs that require qualified professional training and those which require no professional training. In the latter case, approval can only be granted for certain occupations, such as for seasonal workers in agriculture or au-pairs. For jobs requiring qualified professional training, approval may be issued for qualified workers with a recognised degree or a foreign university degree equivalent to a German university degree (Section 27 No. 1 Employment Regulation), to IT specialists (Section 27 No. 2 Employment Regulation) or language teachers (Section 26 Employment Regulation). There are also exemptions to these rules regarding approval for citizens of certain countries. For example, the Federal Employment Agency may allow citizens of Andorra, Australia, Israel, Japan, Canada, Monaco, New Zealand, San Marino and the USA to take on a job irrespective of the nature of the job (Section 34 Employment Regulation). (This is subject to the labour market priority of the preferential applicant.)

Under the new Section 14a Para. 1 Employment Procedural Regulation, the concept of "assumed consent" was introduced with regards to the approval of the Federal Employment Agency. According to this provision, pursuit of employment is deemed to be approved if the Federal Employment Agency does not inform the responsible office within two weeks after the approval inquiry has been submitted that the submitted information is not sufficient for the decision or for the approval or that the employer has not received the necessary information – or has not received this information on time.

Moreover, Section 14a Para. 2 Employment Procedural Regulation introduces the possibility of a "preliminary check": Before the job approval inquiry is submitted, the Federal

Employment Agency should inform the responsible body of its approval or check whether labour market-related requirements exist for subsequent approval if the employer has submitted the required documents and the procedure is accelerated as a result of this.

The following statements relate exclusively to foreigners who are not citizens of the European Union or nationals of countries belonging to the European Economic Area. Citizens of Romania and Bulgaria are usually still restricted to the employment opportunities open to members of third countries (even if they require a work permit but not a residence permit).

The comments still to apply to the relevant regulations for student applicants, students, university graduates, researchers and other academics.

2.1 Student applicants

Individuals resident in Germany for the purpose of applying for a study place (Section 16 Para. 1a Residence Act) are not permitted to take up gainful employment.

2.2 Students attending pre-study preparatory courses (Studienkolleg) and language courses

Participants in pre-study language courses and pre-study preparatory course students are prohibited from taking up gainful employment outside the vacations during the first year of their stay. The prohibition is noted as a condition in the residence permit. During vacations, jobs as defined in 2.3.1.1 and 2.3.1.2 may be permitted. Responsibility for the decision lies with the foreigners authority. On the basis of the Association Agreement, exceptions may apply to Turkish nationals.

In the second year of a stay for the purpose of preparing for study, gainful employment may be taken up to the same extent as is allowed for other students (*cf.* 2.3).

2.3 Students at universities in Germany

Foreigners holding a residence permit to study in Germany are allowed to take up a certain amount of work without needing the approval of the Federal Employment Agency for this job. The work permit is already included by law in the legal provisions of the residence permit. Approval by the employment authorities is needed for any gainful employment that extends beyond this scope. Violations of the provisions on the pursuit of gainful employment by students can be punished in various forms, extending all the way to the revocation of the residence permit.

2.3.1 Approval-free jobs

Approval is not required for jobs which fall under one of the following categories.

2.3.1.1 Secondary/part-time jobs pursued on 120 full days/240 half days

Foreign students at universities in Germany can take up jobs without requiring approval if this work does not, in total, exceed 120 full days or 240 half days per calendar year. A half day is understood to mean that the daily working hours do not exceed four or five hours. The regular working hours of the other workers at the place of work are decisive in this matter. If

these regularly work eight hours, a half day is calculated as four hours of work per day; if the workers regularly work ten hours, a half day is calculated as five hours.

Even if the work is not pursued over a longer period of time, but rather in one go (e.g. in the semester vacations), the working hours are only calculated for those full or half working days on which the student actually worked. Weekends are not included when calculating the accumulated working hours.

Employees and employers must count the working hours that have been completed in the calendar year without approval, so that the 120 full days/240 half days are not exceeded. Working hours must be suitably documented.

In this case, the collateral clause to the residence permit reads as follows: "Jobs up to 120 full days or 240 half days per year as well as secondary/part-time student jobs are permitted." This provision is noted in the residence permit.

As soon as foreign students have exhausted their contingent of approval-free days, they require the approval of the employment authority and the foreigners authority (*cf.* 2.3.2) for further working activities.

2.3.1.2 Working as research or student assistants

Besides the 120 approval-free days, jobs as research or student assistants can also be pursued without requiring approval and without any time limits. Work as student assistant also includes university-based jobs related to the study field in university-affiliated organisations (such as tutors working in halls of residence run by the student services organisation).

Despite the approval-free status, the foreigners authority must still be consulted in the process, since it is responsible for deciding in each case whether and to what extent the work is a student or research assistantship as defined by this regulation. The university should be consulted in cases where it is difficult to differentiate between the job types.

2.3.1.3 Internships and work placements

Foreign students registered at a German university in Germany and wishing to complete an internship must observe the following.

Required/compulsory internships that are prescribed as part of the study programme or that are necessary to achieve the training objective do not require approval. These internships also remain approval-free if students are paid for this work, since the work constitutes part of the studies and is covered by the purpose of residence, namely to "study". According to the "implementing regulations" of the Federal Employment Agency, this also applies to internships in companies which students complete in order to prepare for final examinations. The 120 approval-free working days generally available to students remain unaffected by the required internships or by work pursued in a company to produce the diploma thesis, in other words these days can be used additionally to and independently of the internship.

Voluntary or elective internships that are not an integral part of a curriculum and consequently do not constitute a training phase of a course of study are regarded as gainful employment requiring approval subject to the provisions on the employment of foreigners. Even internships completed without payment are subject to this approval requirement.

The first three months of a voluntary internship may consequently also be covered by the approval-free 120 full-day or 240 half-day ruling, as long as these days have not already been used for other jobs. The approval of the foreigners authority and Federal Employment

Agency must be obtained for any further time spent working (*cf.* 2.3.2). Important: For foreigners studying at a foreign university who come to Germany to complete an internship, other regulations apply (*cf.* 2.4.2.).

2.3.2 Jobs requiring approval

Jobs which extend beyond the options provided for in 2.3.1 generally require approval and must also be permitted by the foreigners authority for foreign students registered at a university in Germany. In special cases, approval-free jobs must also be authorized by the foreigners authority (*cf.* 2.3.1.2) before the job can be taken up.

Longer-term gainful employment extending beyond the 120 full days/240 half days can only be approved for students as a secondary/part-time job. Furthermore, this gainful employment must not change the purpose of residence which is restricted to educational purposes, or substantially impede or delay the achievement of this purpose. Approval of such employment is decided by the foreigners authority at its discretion. For example, it may be considered if the foreigner is at risk of not being able to cover his/her living expenses due to circumstances that are beyond his/her control or that of his/her relatives and if the studies have been pursued purposefully to date. Account must also be taken of the particular difficulties foreigners may face when commencing and pursuing a course of study. In this respect, the university must confirm that the student is expected to successfully complete his/her course.

If the foreigners authority approves longer-term employment, the Federal Employment Agency must generally also approve the job insofar as the job is not approval-free according to the terms of Sections 2 to 16 Employment Regulation.

Whether approval is granted depends on the requirements of the German economy, the labour market situation and on the need to combat unemployment. Furthermore, it must be ensured that no German workers or foreigners who have the same legal status as Germans in respect of taking up employment are available (priority check) to take up the job. The Federal Employment Agency is also bound to this generally valid priority check in the case of foreign students. Approval of a specific job may therefore only be granted if no suitable German or foreign applicant from an EU or EEA country with the same legal status is available to take it.

2.4 Students at universities abroad

Students registered at a university abroad can only take up an approval-free job in Germany under very narrowly-defined conditions. This is possible within the scope of a holiday job or internship. Otherwise, they may only pursue employment with the approval of the Federal Employment Agency.

2.4.1 Vacation/holiday jobs

A residence title for students and pupils from foreign universities and colleges does not need to be approved by the Federal Employment Agency if the vacation/holiday job does not exceed 3 months within a 12-month period and the Federal Employment Agency has itself placed the student in the job (Section 10 Employment Regulation).

2.4.2 Internships

Also approval-free (according to Section 2 Para. 2 No. 3 Employment Regulation) are internships lasting up to 12 months that are carried out within the scope of an international exchange programme organised by associations and public institutions or student organisations for students or graduates from foreign universities (e. g. DAAD, AIESEC, IAAS, ZAV) in agreement with the Federal Employment Agency. The "agreement" (not to be confused with the approval of employment) of the Federal Employment Agency must be obtained from the German International Employment Agency (ZAV) in advance for the entire duration of the internship by the internship provider. Among other things, the ZAV checks that the internship is really not subject to approval, cf. the ZAV's leaflet "Placement approval": <http://www.arbeitsagentur.de/zentraler-Content/Veroeffentlichungen/Merkblatt-Sammlung/MB-ZAV-Praktikazulassung-AG-Info.pdf>

Nor is the approval of the Federal Employment Agency required for an internship carried out within the scope of a programme sponsored by the European Union (e.g. as part of the "Programme for Lifelong Learning" such as ERASMUS, ERASMUS MUNDUS, LEONARDO DA VINCI, or MARIE CURIE, etc.), Section 2 Para. 2 No. 2 Employment Regulation.

Moreover, from 1st August 2012, according to Section 2 Para. 2 No. 5 Employment Regulation, internships which last up to one year during a course of study at a foreign university are approval-free if they are carried out after the fourth semester and if they relate to the subject of study in agreement with the Federal Agency of Employment.

2.5 Graduates of German universities

Foreign graduates of German universities have virtually unrestricted access to the German labour market and enjoy a more favourable status than non-EU citizens. Foreign students who have successfully completed their studies in Germany can have their residence permit extended by up to 18 months for the purpose of looking for a job that is appropriate to their degree according to Section 16 Para. 4 Residence Act. If they find a suitable job within this period, the existing residence permit can be transferred into a residence permit for the purpose of gainful employment (Section 18 Residence Act).

2.5.1 Requirements the job must meet

Since 1st August 2012, this residence permit no longer has to be approved by the Federal Employment Agency according to Section 3b Employment Regulation.

However, it is still necessary that the job is appropriate to the acquired qualification (e.g. Bachelor or Master's degree or PhD).

2.5.2 Forms of employment while looking for a job

To extend the residence permit for the purpose of looking for a job, proof of sufficient resources to cover the cost of living must be provided; for most foreign graduates, this means they have to pursue gainful employment while looking for a job.

Since 1st August 2012, gainful employment without restriction is permitted during the job search phase (Section 16 Para. 4, Sentence 2 Residence Act). In the past, temporary/part-time jobs were only permissible for the length of the time that was permitted during studies.

If a job is taken merely to cover the living expenses while the graduate looks for a job that is appropriate to his/her qualifications, the purpose of residence does not change.

If the stay was financed with a scholarship or grant and if the recipient has pledged to return to his/her home country after graduating, no residence permit is issued for the purpose of finding a job after training in Germany has been successfully completed. However, a limited practical professional activity in the acquired qualification may be permitted for a maximum of two years to improve the graduate's subsequent employment chances in his/her country of origin. Such cases are likely to be rare in practice since DAAD scholarship agreements, at least, do not specify any conditions for return.

2.5.3 Long-term prospects in Germany

The new Section 18b Residence Act specifies that foreign graduates of German universities can even, under the following conditions, obtain a settlement permit, in other words an indefinite right of residence: In addition to the usual requirements for a settlement permit (knowledge of German, secured livelihood, etc.), the foreigner must have owned a residence title for two years according to Sections 18, 18a, 19a or Section 21 Residence Act, have a job that is appropriate to his qualification and have paid compulsory or voluntary contributions to the statutory health insurance scheme for at least 24 months.

Excursus: Labour market access for graduates of German schools abroad

Graduates of German schools abroad with a recognised or a foreign university degree equivalent to a German university degree or a qualified professional education gained in Germany in an officially recognised profession that requires training or a similarly regulated vocation is granted permission to take up a job appropriate to their professional qualification according to Section 27 Para. 1 No. 4 Employment Act without a priority check.

2.6 (Visiting) academics and researchers

Academics and researchers wishing to come to Germany have various ways to enter the country under the Residence Act, each of which has advantages for scientists. These are described in the following:

2.6.1 Residence for employment purposes (Section 18 Residence Act) as (visiting) academic at German universities and research institutes

The approval of the Federal Employment Agency is not required (Section 5 Employment Regulation) if a residence permit for gainful employment is issued according to Section 18 Residence Act to

- university and research institution staff working in the field of research and teaching, staff of research and development institutions as well as language teachers at universities,
- visiting academics and scientists working at a university or a public or largely public-funded research institution or at a research institution run as a public enterprise under private law,
- engineers and technicians working as technical staff on the research team of a visiting academic or scientist, **or**
- teachers from state schools or state-recognised private alternative schools.

Foreign academics and scientists who do not have an employment contract with a university or research institution can receive a residence permit for the pursuit of gainful employment if there is "public interest in their employment" on account of their particular specialist knowledge, and the Federal Employment Agency approves their employment (*cf.* 2.7).

2.6.2 Residence for the purpose of carrying out a research project (Section 20 Residence Act)

According to Section 20 Residence Act, which was added to the Residence Act with the implementation of the "EU Researcher Directive", a foreign researcher is entitled to a residence permit for research purposes if the researcher has concluded an effective admissions agreement with a research institution for the purpose of carrying out a specific research project and his livelihood is secured, which is proven with a monthly income of currently 1,750 € (former West Germany) or 1,493.33 € (former East Germany). The amount is published annually in December by the German Ministry of the Interior for the following year in the German Federal Gazette.

The research institution must agree in writing to assume the costs that may be incurred by public bodies in connection with the researcher's livelihood during an unauthorised stay and his deportation for up to six months after the end of the admissions agreement. This is not the case if the activities of the research institution are financed primarily with public funds. An exception may be made if there is a particular public interest in the research project.

A "research institution" according to Section 20 Residence Act is redefined in Section 38a Residence Regulation as a public or private institution that carries out research in Germany. Alongside the Max Planck Institutes, branches of the Fraunhofer Society and others, this also includes university institutes. These may apply to the Federal Office for Migration and Refugees (BAMF) for appropriate recognition in order to be able to participate in the admissions procedure for researchers.

The permission to take up employment covered by the residence permit for research purposes applies generally to a research project with the research institution specified in the application and also to teaching activities. A labour market check is not carried out, nor does the Federal Employment Agency have to be consulted.

Within certain bounds, the residence permit for research purposes allows EU-wide mobility. For example, researchers who have been admitted under the provisions of the "Researcher Directive" to another EU member state can be issued with a residence permit to carry out part of their research project in Germany. The approval of the Federal Employment Agency is not required by these third-country researchers from other EU countries for gainful employment for their research work during stays in Germany lasting up to a maximum of three months per year.

The "residence permit for researchers" is on principle not applicable to persons whose research activity is part of a doctoral programme because these persons are usually students and thus fall under Section 16 Residence Act. However, in individual cases, doctoral students may be offered a residence permit under Section 20 Residence Act if they carry out their doctoral work as part of a research project for which a research institution has concluded an admissions agreement. Here too, however, proof of a minimum monthly income of 1,750 or 1,493.33 € must be provided.

2.6.3 Settlement as a highly qualified person (Section 19 Residence Act)

Highly-qualified employees may receive a settlement permit under the terms of Section 19 Residence Act immediately and without the approval of the Federal Employment Agency (Section 3 Employment Regulation), if the prospect of integration is favourable. The settlement permit is permanent and automatically entitles the holder to pursue gainful employment.

Highly qualified individuals include

- academics and scientists with specialist subject knowledge and expertise (chaired professors and institute directors) and
- teaching staff and academic/research staff in senior positions (heads of research project and work groups).

These groups of persons are not required to prove they have a certain minimum income.

2.7 Other academics

Foreign academics who are not graduates of a German university and who do not wish to work exclusively in science and research in Germany (*cf.* 2.6) also have various favourable ways to obtain a residence title for the purpose of gainful employment and, after a certain period, to settle in Germany. They also have the opportunity to gain further academic qualifications as foreign academics in Germany.

2.7.1 Residence for the purpose of looking for a job (Section 18c Residence Act)

With the new Section 18c Residence Act, a completely new residence title was introduced to enable qualified specialists to look for employment. Under this provision, a foreigner who has a German or recognised foreign degree or a foreign university degree that is comparable with a German university degree and whose livelihood is guaranteed may obtain a residence title for the purpose of looking for a job that is appropriate to his/her qualification for up to six months. During this time, these persons are not entitled to work. The introduction of the new residence title is based on the consideration that it is often difficult to find a suitable job from abroad. The new Section 18c Residence Act now allows entry for the purpose of looking for a job so that, for example, interviews can be personally attended.

2.7.2 Residence for the purpose of pursuing a highly-qualified profession (Section 19a Residence Act)

With the new Section 19a Residence Act, the EU Highly Qualified Workers Directive has been implemented: According to this directive, foreign specialists can obtain a special new residence title, the "EU Blue Card" to stay in Germany. The requirement is that the foreigner has a German or a recognised foreign degree or a foreign university degree that is comparable with that of a German university. Alternatively, a comparable qualification proven by at least five years' professional experience may suffice.

Furthermore, the foreigner must prove that he is paid a salary that is at least two thirds of the annual income limit for the assessment of contributions to the statutory health insurance scheme. The exact amount is published every year in December by the Federal Ministry of the Interior in the German Federal Gazette for the following calendar year. The minimum salary is currently around € 44,800. In this case, the approval of the Federal Employment Agency is no longer necessary according to the new Section 3a Employment Regulation. For certain occupations for which there is a shortage of suitable staff (doctors, "MINT" and IT specialists), a minimum income of 52% of the contribution assessment, in other words currently just 35,000 € is enough. In this case, the approval of the Federal Employment Agency is not required if the foreign specialist has a German university degree.

After 33 months, holders of the "EU Blue Card" may also apply for a settlement permit, in other words an unlimited right of residence. If their knowledge of German is the equivalent of at least Level "B1", the application can already be submitted after 21 months.

2.7.3 Residence for the purpose of pursuing another qualified occupation (Section 18 Residence Act)

If the desired employment does not fulfil the requirements for a "EU Blue Card", for example because the required minimum salary is not achieved, a residence permit may under certain circumstances be granted for the purpose of employment according to Section 18 Residence Act. Foreigners must be allowed to take this job under statutory conditions. These provisions governing residence for the purpose of gainful employment are defined in Sections 18 to 21 Residence Act. According to this, a residence title for the pursuit of gainful employment can be issued if either the Federal Employment Agency has approved it or a statutory instrument or intergovernmental agreement stipulates that the employment is permissible without this approval.

According to Section 27 Employment Regulation, approval of a residence permit for the purpose of gainful employment appropriate to a professional qualification can be issued to

1. specialists with a recognised or a university degree comparable to a German university degree,
2. specialists with a recognised foreign qualification comparable to a university degree in the field of information and communications technology.

Approval can be given if the employment of foreigners has no negative impact on the labour market – in particular in respect of the employment structure, the regions and the various branches of business and industry. In addition, it is necessary to check whether German workers or foreigners who have the same legal status as Germans in respect of taking up employment are not available (priority check) to take up the job.

2.7.4 Residence for the purpose of further education (Section 17 Residence Act)

Persons who wish to complete an internship or an in-company training scheme in Germany as (prospective) senior executives can obtain a residence permit according to Section 2 Para. 2 No. 4 Employment Regulation without the approval of the Federal Employment if they have been granted a scholarship for the internship from public German funds, EU funds or funds from intergovernmental organisations (so-called "government interns"). An executive is a person who has completed a degree from a university or university of applied sciences or a comparable international qualification.

In all other cases, work associated with further training requires approval. Such approval can be given, however, if a programme is taken that is comparable to those for which public funding is provided and if working conditions and the level of the scholarship or grant corresponds with comparable grants financed from German public funds. Under certain conditions (i.e. where the scholarship holder additionally receives further training without any detrimental effect for applicants from the domestic labour market, it is in the employer's interest to employ a foreign applicant), the priority check may even be waived.

2.8 Spouses of researchers and students

Since 1st August 2012, very favourable regulations apply to the spouses of foreign specialists: According to the new Section 3 Employment Procedural Regulation, the gainful employment of spouses of foreign specialists, who are allowed to pursue gainful employment under the terms of Sections 3b (EU Blue Card), 4 (executives), 5 (scientists and researchers), 27 (specialists) and 28 (senior employees and specialists) Employment Regulation, does not require approval. This applies irrespective of the nature of employment.

Spouses of students require the approval of the Federal Employment Agency before taking up gainful employment, if the job is not approval-free in accordance with Sections 2 to 15 Employment Regulation. The special employment options for students (*cf. 2.3*) are bound to the student status and are not transferable.

In general, the following applies to the employment of spouses of foreigners:

The spouses of foreigners are only allowed to work in Germany if the foreigner to whom the spouse subsequently immigrated is entitled to take up gainful employment or if the state of marital cohabitation has lawfully and regularly existed in Germany for at least two years and if an extension of the residence permit held by the foreigner to whom the spouse is immigrating is not ruled out for whatever reason.

The time at which the subsequently immigrating foreigner receives the residence title is decisive for determining whether this foreigner is entitled to pursue gainful employment. If the foreigner already holds a residence permit at this time, which allows that foreigner to pursue gainful employment, the subsequently immigrating foreigner may also work; if both receive a residence title with a specific entitlement at the same time, this is deemed as sufficient to meet the requirement. The entitlement to take up self-employment can also be granted if the foreigner to whom the spouse is subsequently immigrating is not entitled to engage in self-employment, but can take up gainful employment.

Evaluating whether pursuit of a profession by the joining spouse has to be approved is a separate process based on the general approval provisions (*cf. 2.7*).

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